1949.

File No. O Boroughs 49 pt II

Legal DEPARTMENT
"A" BRANCH

K

Subject:—

Opinions under the Bombay Muncipal Boroughs Act, 1925.

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3. <u>O.No.8427/26.7.49.</u> Question regarding stopping of whipping in slaughter houses.
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4.	O.No.8503/27.7.49.	Question whether the view of the General Manager, M. and S.M. Railway that under sec.154 of the Govt. of India Act, 1935, property vested in this Majesty for purposes of the Govt. of the Dominion shall, save in so far as any Dominion law may otherwise provide, be exempt from all taxes imposed by or by any authority within a province or Acceding State.	5-8 11-14
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12.	O.No.10819/27.9.49.	Question regarding expansion of the Schedule to the Bombay Municipal Boroughs Act, 1925 for the purpose of inclusion of Borough Municipalities in merged ~~M~~ States like Kolhapur and Icholkaranji.	47-48
13.	R.I.No.16701/49. O.No.11661/19.10.49	Re: Amendment of by-law framed under the Bombay Municipal Boroughs Act, 1925 Question whether the amendment of by-law 14 framed by the Ahmedabad Municipality would be ~~ultra~~-vires section 61 of the Bombay Municipal Boroughs Act, 1925.	49-52
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15.	O.No.12133/29.10.49.	Question whether the Court buildings which are beneficially occupied are liable to pay the Municipal tax as assessed under section 74 of the Bombay Municipal ~~tax~~ Boroughs,Act, 1925.	53-54 55-56
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16.	... ...	by or under the Municipality Bombay Municipal Boroughs Act, 1925, Sec.12(b)(ii) (Please see R.L.A.'s No.10756 dt.6.12.40 and Advocate General's Opinion dt.21.12.40)	57-58
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19.	R.I.No.20172/49 O.No.14417/12.12.49	Question whether the State Transport Vehicles are eligible for exemption from wheel-tax to which all Govt. Vehicles are eligible. (Please see R.L.A.'s No.1648/ 6.2.50 and No.4091/24.3.50)	67-68
20.	R.I.No.18504/49 O.No.14711/19.12.49	Question whether the Pandharpur Electric Supply Co. Ltd. is required to take out a licence for running the Power house under by-laws 2 read with by-law 1(ii) (y) of the By-laws framed by the Pandharpur Municipality under sec. 61(1)(b)(iii) of the Bombay Municipal Boroughs Act, 1925.	69-72
21.	O.No.14895/22.12.49.	Question whether appointment of a person in the scale of Rs.45-60 can be made on Rs.60 straight-way instead of an Rs.45/- the initial salary. Ahmedabad Municipal Code Rule 277. (Please see R.L.A.'s opinion No. O.Munis. Cities-17 dt.30.1.29).	73-74

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Bombay Municipal Boroughs Act, 1925 sec.68(1)

Expenses over temple

The acquisition as well as maintenance of a temple out of the municipal funds would be foreign to the objects and purposes of the Bombay Municipal Boroughs Act, 1925. However having acquired the temple it would not be proper for the municipality to retain the temple without arranging for its maintenance and appointing a pujari. In view of the peculiar circumstances of this case the municipality may be allowed to continue the present agrangement provided it is willing to declare the temple to be a public building withtin the meaning of of section 68(1)(a) of the Bombay Municipal Boroughs Act, 1925 and to reduce the present expenditure to its minimum.

Id/ .....1/8.
Remembrancer of Legal Affairs.

U.R. to H. & .L.C.D. No.8684 dated the 2nd August 49.

Office of the R.L.A.

Bombay Municipal Boroughs Act,1925 Section 73(ii)

R.L.A's opinion No.708 dt. dt.20/1/49.

In R.L.A's opinion No.708 dated 20 th January 1949 it is pointed out that in respect of buses which pass through Ahmednagar while plying between two towns, the claim of the Ahmednagar Municipality for a wheel tax does not appear to be valid. The Provincial Motor Transport Controller states that though the State Transport Buses are not kept for use within the Municipal limits, but for use on rural roads, the termini of the route happens to be within the Municipal limits and that few Vehicles are actually garaged there over-night. The expression "kept for use" in section 73(ii) of the Bombay Municipal Boroughs Act, 1925, was interpreted in Chunilal V. Ahmedabad Municipality as meaning kept for normal use. When the terminus of the route itself happens to be within the Municipal limits, it would imply that the Vehicles are normally used for for plying within the limits of the Municipality in the sense that they pick up and convey the passengers from the Municipal limits. They cannot be said to be merely passing through the Municipal limits while plying between two towns. The Vehicles would therefore, be deemed to be "Kept for use" within the Municipal limits, and as such would be liable to the wheel-tax under Section 73(ii) of the Bombay Municipal Boroughs Act,1925.

As regards the second question, the Provincial Motor Transport Controller has stated in his letter No.S.T. 169/2150 dated 28th October 1948 that the State Transport Services is run on commercial basis." It is therefore, clear that they cannot be said to be "used solely for public purposes" nor can they be considered as " not used or intended to be used for purposes of profit" within the meaning of proviso (a) to Section 73 of the Bombay Municipal Boroughs Act, or proviso

proviso(a) to Section 59 of the Bombay District Municipal Act, 1901 (Cf.R.L.A.'s No.B.M.40 dated 14-3-1907). Consequently, State Transport Vehicles are liable to pay wheel-tax under Section 73(ii) of the Bombay Municipal Boroughs Act,1925.

d/.....23/7.

Remembrancer of Legal Affairs.

U.R.to H.D., No.8368, dated 25th July 1949.

Office of the R.L.A.

Stopping of whipping in slaughter houses

Bombay Municipal Boroughs Act,192 Section 61(1)(b)

Bombay District Municipal Act,190 Section 48(1)(b) and City of Bombay Municipal Act,1888 Section 461(a).

Under clause (b) of sub-section (1) of section 61 of the Bombay Municipal Boroughs Act and section 48 of the Bombay District Municipal Act, a Municipality can frame a by-law " prescribing the conditions on or subject to which and the circumstances in which and a the areas or localities in respect of which licenses may be granted, refused, suspended or withdrawn for the use of any palce not belonging to the Municipality as a slaughter house etc. and providing for the inspection and regulation of the conduct of the business in any place used as aforesaid so as to secure cleanliness therein or to minimise any injurious offensive or dangerous effect arising or likely to arise therefrom". Unlike the City of Bombay Municipal Act,1888, the clause does not spcifically empower a municipality to regulate the business in such a way so as to prevent the exercise or cruelty to animals (Compare clause (n) of section 461 of the City of Bombay Municipal Act.). Nevertheless it would be competent to the Municipality to lay down a condition for granting a license that in the slaughter house the evil practice of beating should not be adopted as this practice is an offence against the law. Any such condition will fall within the wide terms of the clause.

Id/ ——25/7

Remembrancer of Legal Affairs.

U.R.to H. & L.G.D., No.6427, dated the 26th July 1949/

The Railways. Local Authorities' Taxation)Act, 941. Section 3(1).

The view taken by the General Manager, Madras and Southern Mahratta Railway is correct. Under section 154 of the Government of India Act, 1935, property vested in his Majesty for purposes of the Government of the Dominion shall, save in so far as any Dominion law may otherwise provide, be exempt from all taxes imposed by, or by any authority within, a Province or Acceding State. The Madras and Southern Mahratta Railway property which is vested in His Majesty for the purpose of the Government of the Dominion, has been expressly made liable in pursuance of the Government of India ministry of Railway (Railway Board) Notification No.F(X)II-48/TX 16/1, dated the 27th March 1948, issued under section 3(1) of the Railway (Local Authorities' Taxation) Act, 1941, to pay the lighting tax levied by the Gadag Betegiri Municipality. The words "if the Central Government by notification in the Official Gazette, declares it to be so liable" in section 3(1), clearly imply that a railway property would not be liable to pay the tax unless a notification is issued by the Central Government making it so liable. In other words, issue of a notification by the Central Government under section 3(1) of the Railway (Local Authorities' Taxation) Act, 1941, is a pre-requisite to any liability on the part of the railway to pay a tax in aid of any local authority. As in the present case, the requisite notification was issued by the Central Government on 27th March 1948 under proviso (a) to section 77 of the Bombay Municipal Boroughs Act, 1925,

the Madras and Southern Mahratta Railway would be liable to pay the lighting tax with effect from the 1st April 1948.

Id/.....26/7.

Remembrancer of Legal Affairs.

U.R. TO H.& L.C.D.No.8503, dated the 27th July 1949.

Office
[illegible] the B.I.T.

Under section 25(1) of the Bombay Municipal Boroughs Act, 1925, councillors nominated or elected at a general election shall, save as otherwise provided in the Act, hold office for a term of three years, extensible by order of the Provincial Government to a term not exceeding in the aggregate five years, if on any occasion the Provincial Government shall think fit so to extend the same. Section 19(1) of the Act provides that, save as otherwise provided in this Act, a President or Vice President shall hold his office for such term not less than one year and not exceeding three years as the Municipality shall, previous to the election of the President or Vice President, determine or until the expiry within the said term of his term of office as councillor but shall be eligible for re-election. In pursuance of this provision the Karad Municipality by its resolutions No.25/110 and 25/111 dated the 7th October 1948 determined the period for which the President and the Vice President were to hold their offices as follows: " for the period from 7-10-1948 till the life of the present Board." The normal life of the Board under section 25(1) , viz, of three years, was to expire on 31st July 1949. That life was extended by Government up to 31 st October 1949. Ordinarily the expression " the life of the present Board" would include not only the normal life of a triennium but the life as extended because under section 25(1) it is the same councillors who form the Board during the triennium who are continued thereafter. The extension by Government up to the 31st October 1949 does not also in this case contravene the mandatory provisions of section 19(1) which puts an upper limit of three years for the tenure of the President's or Vice-President's office .The view taken by the Collector of

Satara is not, therefore, correct and the President and the Vice President are entitled in terms of the resolutions dated the 7th October 1948 to continue till the 31st October 1949.

Id/.....13/8.

Remembrancer of Legal Affairs.

U.O. to H.S L.G.D.No.9212 dated 13th August 1949.

DIR

Bombay Municipal Boroughs Act,1925 sections 73(1)(c) and 74(3).

Special Educational Tax whether included in the consolidated tax.

The view taken by the Commissioner, Northern Division, in paragraph 2 of his endorsement at page 7 ante , is correct.

If a consolidated tax is levied as a rate on buildings under clause (c) of section 73(1) of the Bombay Municipal Boroughs Act,1925, it would be deemed to be a rate on buildings and section 74(3) would apply. Government would in that case be liable to pay eight-tenths of the amount which would be payable by an ordinary owner of buildings in the said Borough. This consolidated tax levied on the rate being inclusive of lighing tax, it would not be possible for Government to avoid payment of this lighting tax by resorting to clause (a) of the proviso to section 73(1). But a special educational tax cannot be levied as part of the consolidated tax, for under clause (c) of section 73(1) the only taxes which can be levied as a consolidated tax assessed as rate on buildings or land or both are taxes described in clauses, (i), (viii), (x) and (xi). In Government Resolution, Health and Local Government Department No.4104/33, dated the 28th May 1948, it appears that Government has indicated that the consolidated tax including the educational cess should be levied. But as stated above, a special educational tax cannot be so levied under the provisions of the Bombay Municipal Boroughs Act. If such a tax is to be levied, it will have to be levied as a separate tax, in which case Governmetn would not be liable without express consent to pay such tax.

Id/.....9/8.

Remembrancer of Legal Affairs.

U.R.to H.&L.G.D.No.9283 , dated the 10th August 1949.

DZR.

As required by sub-sec.(2) of sec.35 of the Bombay Municipal Boroughs Act, 1925, twenty-four councillors of the Gadag-Betigeri Municipality presented written requests to the President on 6th and 7th October 1948 for calling a special general meeting for passing a resolution for termination the services of the Chief Officer. As the special general meeting was not called by the President within the time stipulated in sec.35(2) , the Cellr. of Dharwar invited attention of the Vice-President to the provisions of the said section under which he (Vice-President) could call such meeting on the failure of the President. The Vice-President too failed to call the special general meeting. In his letter No.891, dated 6-11-1948, the President has explained the reasons why he did not convene the meeting. The Collr. however, states that even if three of the signatures are ink disqualified under sec.25(1) , the number of members requesting to call the meeting was more than 1/4 th as required by sec.35(2) and consequently, there were no justifiable grounds for the President or Vice-President for not convening the special general meeting as desired by the members.

Vide pp.1-2 ante

Vide p.9 ante

p.15 De

Vide p.9 ante.

Bombay Municipal Boroughs Act,1925.

Section 210(1)

Removal of defaulting President.

It appears that no action under section 210(1) of the Bombay Municipal Boroughs Act,1925 would be legally feasible as the default has been committed not by the Municipality but by the President in the discharge of his duties. The Act makes no provision empowering Government to take action against such defaulting president as possibly it was not conceived that an elected president of a Borough Municipality would ever act so abnormally and in defiance of the provisions of the Act, Government may consider the advisability of amending the Act to meet such contingencies. In the meantime it should be left to the members to consider whether they can remove him under section 21.

XG/ .....15/7.

Remembrancer of Legal Affairs.

U.R.to H. & L.G.D.No.2030, dated the 16th July 1949.

DIR.

Bombay Municipal Boroughs Act,1925. Sections 58(c) and 59(2).

Under sub-section (2) of section 59 of the Bombay Municipal Boroughs Act, a municipality shall have power to make without sanction a rule under clause(c) of section 58 creating an appointment or increasing the salary of an appointment or granting or increasing an allowance in any case where the salary of such appointment or the amount of such allowance or the amount of such increase, as the case may be, does not involve a charge on the municipal fund exceeding rupees one hundred in the month. ✱ Even if the resolution No.202 passed by the Jalgaon Borough Municipality on 30th March 1948 combining the two separate posts of the Chief Officer and the Engineer be treated as a rule creating a new combined appointment or alternatively increasing the salary of the appointment of the Chief Officer or increasing the allowances of that appointment, there is no material among the papers to show that this involved a charge exceeding one hundred rupees over the aggregate of the emoluments (including allowances) of the two appointments of Chief Officer and Engineer which were created long ago with the necessary sanction of Government. Unless the fact of such excess charge is established the question raised by H. & L. G.D. does not arise.

Id/.....30/8.

Remembrancer of Legal Affairs.

U.R. to H. & L. G. D. No.9630 dated the 30th August 1949.

YKR.

L.D.R.I. 10633 dt. 14.7.49.

Submitted.

Please see the litter from the Consulting Surveyor (No.S.T.30 dt. 8.6.1949) at p.1.

2. It appears that, within the limits of the Surat Borough Municipality, there are narrow Bhangi Streets 3 to 4 feet in width which are used by scavengers in removing the night soil from private privies. As the Municipality is to start work of laying underground drainages for the whole city it is found necessary to broaden and align these narrow streets to a uniform width of 8 feet. The President of the Municipality has enquired of the Consulting Surveyor whether it would be possible to make a Town Planning Scheme for these areas as the acquisition of these lands would prove costly. The Consulting Surveyor has raised a question whether it would be feasible to take action under section 15A of the Bombay Town Planning Act (I of 1915). The R.L.A. is requested to advise.

.....

DY.

Bombay Town Planning Act 1915. Section15-A(1)

Bombay Municipal Boroughs Act,1925 sections 114 and 117.

It appears that section 15-A(1) of the Bombay Town Planning Act, 1915, cannot be availed of for the purpose, firstly because the straightening and widening of Bhangi passages involves no laying out of streets(see section 114 and 117 of the Bombay Municipal Boroughs Act,1925) and secondly because it is primarily intended to save the costs of acquisition although it may indirectly benefit the owners.

Id/.....9/9..

Remembrancer of Legal Affairs.

U.R. to H.A. L.D.D. No.10236 dated the 10th September 1949.

Where no expenditure is to be incurred on any public reception out of the Municipal fund, the provisions of section 71(a) would not be attracted. But as the reception is to be given by the Municipality, under section 35(10) it should be supported by a resolution passed by a majority of votes of the Councillors present and voting at the meeting.

The view at 'A' of the H.& L.C.D. office note is correct.

16/.....3/10.
Remembrancer of Legal Affairs.

U.O. to H. & L.C.D., No.682- Confl. dated the 1st November 1949.

DIR.

The view taken by the Special Officer, Political & Services Department, is correct, although his reasoning is not.

2. The Kolhapur State(Application of Laws) Order, 1949, was passed with effect from 1st March 1949. By virtue of clauses 3 and 5 of that order, the District Municipal Act and the Boroughs Municipal Act in force in Kolhapur State were repealed and the Bombay District Municipal Act,1901, was applied. Consequently, the Borough Municipalities in Kolhapur State were deemed to have been constituted under the Bombay District Municipal Act with effect from 1st March 1949 and came to be governed by that Act. By order

No.4384-46-I dated 25th July 1949 issued under sec.4 of the Extra Provincial Jurisdiction Act the Bombay Municipal Boroughs Act was applied to the state. But the mere application of the Bombay Municipal Boroughs Act would not be enough to convert the existing District Municipalities into Borough Municipalities unless an order under section 4(1) is issued see section 5(1) and the definitions of "municipal boroughs" and "municipal district" in clauses(9) and (10) of section3. Consequently, an order under section 4(1) should now be issued so that the Borough Municipalities at Kolhapur and Ichalkaranji may be included in the Schedule, and the provisions of the Bombay District Municipal Act should cease to apply from the date of such notification. It is only after this notification is issued * that these Municipalities would be deemed to be constituted under the Bombay Municipal Boroughs Act, 1925.

DHR.

Office of the H.L.A.

The view taken by the Special Officer, P & S.D. is correct.

Id/.....20/8.

Remembrancer of Legal Affairs.

U.O. to H.A.L.C.D. No.9383 dated the 20th August 1949.

DIR

The proposal made by the Health & Local Government Department is premature and at this stage unnecessary. The Kolhapur and Ichalkaranji municipalities have been continued as borough municipalities under the Bombay Municipal Boroughs Act,1925, as applied to the territory which was formely included in the Kolhapur State. It had been regognised by the Government of India, Ministry of Law,s letter No.3108/49 ADV dated the 26th July 1949, that the laws so applied are distinct from the laws which were in force in the Province proper. Legislation will be undertaken to remove this distinction, and when the identical enactment comes into force throughout the Province including the areas of the merged States, that would be an appropriate stage at which the Schedule to the Bombay Municipal Boroughs Act,1925, may be expanded by the inclusion of borough municipalities like Kolhapur and Ichalkaranji.

Id/.....26/9.

Remembrancer of Legal Affairs.

U.R. to H. & L.G.D.No.10819 dated the 27th September1949.

L.D.R.G. No. 16701/49.

The existing by-law 14 of the By-laws framed by the Ahmedabad Municipality regarding the stabling of milch cattle etc. provides:— " Every licence holder shall at all time during the continuance of his licence be responsible for the due fulfilment and observance of all the obligations imposed on him in the foregoing provisions of these by-laws and in case of any infringement of or neglect or failure on the part of the licence holder or of any other person employed to fulfil or observe any of the said provisions, his licence will be liable to revocation or suspension and every person committing an infringement of any of the provisions of these by-laws or conditions and regulations prescribed in the licence, shall, on conviction before a Magistrate for every such offence, be liable to fine not exceeding Rs.50/-"

The Municipality has tiw decided to amend the said by-law by adding the following:-

P.13 ante. " and in the case of continuing offence, with additional fine which may extend to Rs10/- for each day shmk during which such offence is continued after the date of conviction for first such offence"

1.1 do. The Commissioner, Northern Division, holds that Sect.61 of the Bombay Municipal Boroughs Act prescribed a fine not exceeding five hundred rupees for every infringement of the by-law framed thereunder, but there is no provision for inflicting punishment for a continuous offence, and that in the absence of such provision it is doubtful whether the proposed amendment can be sanctioned. R.L.A. is requested

to advise whether the proposed amendment would be intra-vires Sect.61 of the Bombay Municipal Boroughs Act.

Office of the H.L.A.

Bombay Municipal Boroughs Act, 1925.
Sections 61(1)(ee) and 193A.

The view taken by the Commissioner, Northern Division is correct. In the absence of any provision in section 61(1)(ee) of the Bombay Municipal Boroughs Act,1925 providing for power to prescribe punishment for a continuing offence, the proposal of the Ahmedabad Municipality would not be legally feasible. If however the Municipality is of the opinion that in the interest of its administration the provision for punishment for a continuing offence is necessary, the Municipality may consider whether it can delete provision in the by-laws for punishment and resort to section 193-A.

Is/ .....18/10.

Remembrancer of Legal Affairs.

U.R. to H.& .L.G.D. No.11661 dated 19th October 1949.

DYR

Office of the P.L.A.

Loan of Municipal Building for holding a conference of Village Panchayats.

No serious objection can be taken to the loan of a municipal building for holding a conference of village Panchayats for, the building is under the control of the Municipality and the object of the conference could apparently be to consider the problems relating to the local self Government, in which the Municipality is directly or indirectly interested.

Sd/.....27/4.

Remembrancer of Legal Affairs.

2

U.O.No. 10 A. and L.G. Department, No.12078 dated the 28th October 1949.

DYR.

Office of the R.L.A.

Bombay Municipal Boroughs Act, 1925. Section 74.

The view taken by H. and L.G. Department is not correct. The court buildings at Dharwar being beneficially occupied are a liable to pay the municipal tax as assessed under section 74 of the Bombay Municipal Boroughs Act, 1925. This was conceded by Government in the Past (see P.21 post). The period for which the rateable value of these buildings was determined under section 74 having expired in 1946, Government should, if necessary, take steps to have them revalued and pay the tax for the subsequent years.

Id/.....29/10.

Remembrancer of Legal Affairs.

U.E. to H.and L.G.Department, No.12133, dated 29th October 1949.

DTR

The Bombay Municipal Boroughs Act, 1925. S.12(b)(ii)

R.L.A's opinion No.10756dated 6-12-40 and A.G.'s opinion dated 21-12-40.

The question whether the President by reason of his having lent money to some of the subordinate Municipal Servants is said to have an interest in any employment with our under or by or on behalf of the Municipality within the meaning of section 12 clause (b)(ii) of the Bombay Municipal Borough Act,1925 was considered by the R.L.A. in his opinion No.10756 dated 6-12-1940 where he observed " The dealings are not connected either directly or indirectly with the employment of employees concerned within the meaning of section 12, clause (b) (ii) of the Act. It is farfetched to construe that the dealings create an interest for the President in the employees' continued employment in that he would thereby be able to x recover his dues with certainty or with facility.". In his opinion dated 21-12-1940 the Advocate General in concurring with the aforesaid opinion of the R.L.A. observed; " the words any share or interest" indicate some direct pecuniary gain to be obtained out of the employment." The present case is converse of the case considered in the aforesaid opinion of the R.L.A. but the principle enunciated in that opinion applies with equal force. The Councillors who had borrowed money from Dr.(Miss) Shakuntalabai Sambhajirao Karpe, an employee of Barsi Municipality cannot be considered to have an interest in her employment with, by or under the Municipality since these Councillors, would in no way benefit by her such employment. The view taken by the Secretary, Health & Local Self-Government, is correct.

Id/ .....29/11.

Remembrancer of Legal Affairs.

U.R. to H.& .L.G.D. No.13777 dated the 30th November 1949.

DYR

L.D.R.J.No.17817/49

The existing scale of pay of the Chief Officer, Ahmedabad Municipality, is Rs.700-50-2/1000 plus Rs.150/- as motor allowance. The Municipality has now submitted a proposal for revision of the Chief Officer's pay in the scale of Rs.800-75-1250 plus Rs.200/- as motor car allowance. The F.D.has, however, proposed the scale of Rs.800-50-950-75-1250 plus Rs.200/- as motor car allowance.

The question for H.L.A's consideration is whether under sec.58 of the Bombay Municipal Boroughs Act, 1925, Government can modify the rules submitted by the Municipality without making a reference to the Municipality.

Under clause (c) of sec.58 of the Bombay Municipal Boroughs Act, a Municipality shall make rules not inconsistent with the Act determining the staff of officers and servants to be employed by the Municipality and their respective designations, salaries, fees and other allowances of such officers and servants etc. and may from time to time alter or rescind such rules. Proviso(a), however, provides that no rule or alternation of a rule shall have effect unless and until it has been approved by the Provincial Govt. The power vesting in Govt. under proviso(a) to section 58(c) to approve a rule determining the pay of the C.O. does not include power to amend or modify the rule proposed by the Municipality. Consequently, it would not be competent for Govt. to sanction a scale of pay other than that proposed by the Municipality. If Govt. is not prepared to approve the scale of pay as proposed by the Municipality, Govt. may inform the Municipality accordingly indicating at the same time

what scale of pay would be approved by Govt. so that the Municipality [redacted] if agreeable to that scale, may pass a fresh resolution accordingly and seek Govt's approval (See R.L.A's No.8795 dated 17-9-48).(It is high time that the H & L.G.D. is warned not to refer questions in respect of which opinion has laready been expressed).

If approved, reply may be ——

Attention of the H. & L.G.D. is invited to R.L.A.'s opinion No.8795, dated 17-9-48 wherein a similar question has been considered.

U.R. to H.& .L.G.D. No.12575 dated 8th November 1949.

Bombay Municipal Boroughs Act,1925.

Section 53(a)read with section 46.

Under the existing rule 51 of the Ahmednagar Municipal Rules, the power to appoint officers whose pay exceeds Rs.30/- per month is reserved to the Municipality itself, while under rule 192, subject to the provisions of sections 33 and 34(5) and (6), the power to fine, reduce, promote, suspend, discharge, dismiss or otherwise punish any municipal officer or servant whose salary exceeds Rs.30/. is delegated to the Standing Committee. Rule 51 as proposed to be amended by the Ahmednagar Borough Municipality, seeks to delegate to the Chief Officer the power to appoint any Municipal servant whose basic salary is upto Rs.65/- p.m.(See proposed rule 51A). While the power to appoint a Municipal Officer or servant whose pay exceeds Rs.65/.p.m.is sought to be reserved to the Municipality itself. Similarly under the proposed amended rule 192, the power to fine, reduce, suspend, discharge, dismiss or otherwise punish any municipal officer or servant whose basic pay is below Rs.65/. is sought to be delegated to the Chief Officer, while similar power exercisable in the case of any Municipal Officer or servant whose basic pay is Rs.65/. and above p.m. is to delegated to the Standing Committee. The H. & L.G.Dept. considers that the proposed rule 51A is contrary to the provisions of section 34(1)(e) of the Bom.Municipal Boroughs Act, while rule 192 does not contravene the provisions of section 34(2)(a) of the Act. R.L.A. is requested to advise whether the H.& L.G.Dept. view is correct.

The powers and duties exercisable by the Chief Officer are specified in section 34 of the Bombay Municipal Boroughs Act, 1925. Under cl.(a) of Sub-section (1) of section 34, the Chief Officer shall, subject to the general control of the President, -

(i) watch over the financial and executive administration of the Municipality, and

(ii) perform all the duties and exercise all the powers.

(a) specifically imposed or conferred upon him by the Act, or

(b) delegated to him under this Act.

Clause(e) of section 34(1) provides that subject to the provisions of sub-section (4), the Chief Officer shall appoint to any post the monthly salary for which as fixed by rules made under section 58(e) does not exceed Rs.50/- and to any other post the appointment to which has not been otherwise provided for by such rules. It is clear that Cl.(e) specifically confers upon the Chief Officer power to appoint officers and servants of the Municipality whose monthly salary as fixed by rules made under section 58(e) does not exceed Rs.50/- . By implication it follows that the power to appoint officers and servants of the Municipality whose salary as fixed by rules under section 58(e)exceeds Rs.50/- vests in the Municipality itself. Under section 46, any powers or duties or executive functions which may be exercised or performed by or on behalf of the Municipality may be delegated in accordance with the rules to be made by the Municipality to the President,the Vice-President or to the Chairman of the Scheme or the Committee, or to any one or more stipendiary or honorary officer, but without prejudice to any powers conferred on the Chief Officer or any Committee by or under section 37,37A or 38 etc. Section 58(a) provides for power of a Municipality to make rules inter-alia regulating the delegation of any of its powers or duties to any Committee or to the Chief Officer. The delegation under section 46 can therefore, be made in accordance with the rules made under section 58(a). Section 46 is complementary to section 58(a).

Consequently under section 58(a) read with section 46, the Municipality can make a rule delegating its power to the Chief Officer of appointing a municipal officer or servant whose basic monthly salary is upto Rs.65/-. The proposed rule 51A would, therefore, be intra-vires sections 46 and 58(a) of the Act.The view of the H.&.L.G.D. Dept. on this point is not correct.

Under cl.(a) of sub-section (2) of section 34, the Chief Officer may subject the provisions of sub section (4)

(i) fine, reduce, suspend or reduce any municipal servant whose salary does not exceed Rs.30/- and

(ii) subject further to the provisions of the rules any other municipal officer or servant,not being the health officer, engineer or x auditor.

All municipal servants other than the health officer, engineer, and auditer whose salary exceeds Rs.30/- but is below Rs.65/- would fall under the latter part of this provisions and the Chief Officer may, if so empowered by rules made under section 58(f) fine, reduce or suspend any officer or servant of the Municipality whose salary exceeds Rs.30/- but is below Rs.65/-. The x amendment of rule 192 as proposed would be intra-vires.

Id/.....,7/12.

Remembrancer of Legal Affairs.

U.R.to H.&.L.G.D.No.14216 dated the 6th December 1949.

L.D.K.J. No. 172/49.

p.p.33-35 ante.

Attention is invited in para 2 of R.L.A.'s opinion No.8368 dt.25.7.49 and to letter from the Provincial Motor Transport Controller, No.S.T.169/1/S.C. R./321 dated 29.11.49 wherein the P.M.T.C. requests R.L.A. to review his decision mainly on the ground that the State Transport operation is not for the benefit of a private person, but is a public utility service, that the Corporation is only an agency of Govt. and that as any surplus over the expenditure is ploughed back into the service in form of improvements of the roads etc. the State Transport Vehicles are eligible for exemption from wheel tax to which all Govt.Vehicles are eligible. It appears from the report in to-day's Times and "Bharat" that H.M.(R.& H) handed over the assets of the State Transport Service amounting to rupees four crores to the Chairman of the Corporation constituted by the Prov.Govt.under the Road Transport Corporation Act,1948, by issuing H.D.Notifn. No.1780/5 dt.16.11.49. Since the transport vehicles now vest in the Bom$ State Road Transport Corporation, they no longer continue to be the property of Govt. and consequently no exemption can now be claimed in respect of such vehicles under Proviso(a) to Sect.59 of the Bom.Dist.Municipal Act. proviso(a) to sect.73 of the Bom.Municipal Boroughs Act . The transport vehicles of the Corporation kept for use within the Municipal District would be liable to pay wheel tax under sect.59. (ii) of the Bom. Dist. Municipal Act Sect.73(ii) of the Bom. Municipal Boroughs Act. Consequently, in view of the changed circumstances there is no substance in the argument advanced by the P.M.T.C. as proviso(a) to sect.59 of the Bom.D.M.Act or

Proviso (a) to sect.73 of Boroughs Act would
no longer be attracted, and consequently, no question
of exemption arises. If approved, H.D.may be
informed as of 'A'.

J.R to H.D. No.14417 dt.12th December 1949.

(Pl.see also R.L.A'sNo.1648 dt.6.2.1950 and 4091 dt.24.3.50).

R.9.No.1850 4/49.

(69) LEGAL DEPARTMENT.

The question for R.L.A's consideration is whether the Pandharpur Electric Supply Coy.,Ltd. is required to take out a license for running the power house under by-law 2 read with by-law 1(ii)(y) of the By-laws framed by the Pandharpur Municipality Under Sec. 61(i)(b)(iii) of the Bombay Municipal Boroughs Act, 1925.

.....

It appears that the Pandharpur Electric Supply Co. is a factory under by-law 1(11) of the By-laws framed by the Pandharpur Municipality under section 61(1)(b)(111) read with section 186(1)(q) of the Bombay Municipal Boroughs Act, 1925 and the Company will have to take a license from the Municipality. It may however to be noted that in by-law 1(ii)(y) between the words " doing work" and "in which steam" the word "or" is missing. The by-law may be amended by inserting the word "or".

Id/.....17/12.

Remembrancer of Legal Affairs.

U.R.to H. and L.G.D., No.14711, dated 19th December 1949.

DHR

From the L.D. papers underlying R.L.A's Opinion No.O.Munis. Cities-17 dated 30-1-1929(the year of the opinion appears to have been wrongly quoted by H.&.LG.D) it appears that one Mr. Keskar was appointed on Rs.60/- in the scale of Rs.45-60 and the question raised was whether Mr.Keskar could be appointed straight way on Rs.60/- instead of on Rs.45/-, the initial salary. R.L.A. held that it was a case of accelerated promotion due to premature grant of increments. In substance, the R.L.A.'s view was that in the case of a fresh recruit it would be open to the Municipality to give advance increments and it was nowhere stated that once a person is in Municipal Service he could later on be granted accelerated promotions. That view does not in any way conflict with Rule 277 of the Rules of the Ahmedabad Municipality.

Id/.....21/12.

Remembrancer of Legal Affairs.

U.R.to H.&. L.G.D.No.14895 dated 22nd December 1949.

DYR.